

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2975

Heard in Montreal, Thursday, 10 September 1998

concerning

ONTARIO NORTHLAND RAILWAY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

EX PARTE

DISPUTE –BROTHERHOOD:

The Company's failure to serve the Brotherhood proper notice in accordance with article 53 of agreement no. 8 prior to the implementation of operational changes which took place in North Bay on October 26, 1997. This change has had significant adverse effects on the impacted locomotive engineers.

DISPUTE – COMPANY:

A claim by the Brotherhood that the Company violated article 53 of agreement #8 by failing to serve notice and to negotiate with the Brotherhood when it implemented a change in train operations at North Bay.

BROTHERHOOD'S STATEMENT OF ISSUE:

On October 20, 1997, the Company notified their line officers of the following:

Arrangements have been concluded between Ontario Northland and CN North America to operate CN Nos. 451-450 on a Mac Yard direct to Englehart and an Englehart direct to Mac Yard essentially running through of North Bay. Implementation of this operational change is scheduled to commence on Sunday, October 26.

The result of the Company's unilateral operational changes resulted in the loss of two permanent locomotive engineers' positions and a subsequent ripple effect on the junior locomotive engineers.

The Brotherhood contends that these operational changes were solely brought about by the Company and the Company has failed to establish that the operational changes justify the exemptions set out in sub-paragraph (i) of article 53.1 of agreement no. 8.

The Brotherhood further contends that a material change notices was required in the instant case.

The Company declined the Brotherhood's grievance.

COMPANY'S STATEMENT OF FACT:

The Brotherhood of Locomotive Engineers and the United Transportation Union were notified by letter on October 17, 1997 that CN trains arriving at North Bay destined for Englehart, Cochrane or Kidd would no longer be marshalled into the North Bay yard but would continue on to destination. This arrangement resulted in the discontinuance of one yard assignment at North Bay as advertised in bulletins E-1 and B-1 issued on October 14, 1997 to take effect at 0001 hours on October 26, 1997. Both the UTU and the BLE initiated policy grievances on the matter.

COMPANY'S STATEMENT OF ISSUE:

The BLE and the UTU allege that this change in operations is subject to the requirements of article 53 of both agreement #8 and agreement #10 and have requested that the Company negotiate measures to minimize any adverse

effects on employees in accordance with article 53. The Company declined both the BLE's and the UTU's requests and contends that the change is not one which comes within the scope of article 53.

The Company asked the Brotherhood to sign a tri-party statement with the UTU and the Company and to proceed to arbitration jointly on the issue. The Brotherhood declined the request. Consequently, the Company advised of its intention to present a preliminary argument that the arbitrator make one ruling on the issue binding all three parties after hearing the presentations of each of the parties.

FOR THE BROTHERHOOD:

(SGD.) B. E. WOOD
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) J. K. KNOX
DIRECTOR, HUMAN RESOURCES

There appeared on behalf of the Company:

- M. J. Restoule – Manager, Labour Relations, North Bay
- T. G. McCarthy – Training Officer, North Bay
- J. Mainville – Manager, Train Services, North Bay

And on behalf of the Brotherhood:

- B. E. Wood – General Chairman, New Bedford
- S. O'Donnel – Local Chairman, North Bay
- M. Kenney – Secretary Treasurer, North Bay

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that the Company, in conjunction with CN, has implemented a change with respect to the handling of CN trains no. 451 and 450, operating between MacMillan Yard and Englehart, via North Bay. Prior to the change, implemented on October 26, 1997, train 451 would proceed from MacMillan Yard in Toronto to North Bay where it would enter the Ontario Northland yard. The CN crew would simply yard its train at that location. Thereafter certain switching in relation to the dropping of cars destined to Ontario Northland or CP Rail would be performed by Ontario Northland's yard crews, who would also re-marshal the train for operation onwards to Englehart by a Company crew. Under the new arrangement the CN train no longer enters the Ontario Northland's own yard. Rather it proceeds to a CN transfer yard, where the blocks of the train destined for the ONR or the CPR are cut. The remainder of the train then proceeds to the North Bay station where the CN crew is replaced by an ONR crew, which handles the train onwards to Englehart. A similar arrangement occurs with respect to the return of the train, known as train no. 450, from Englehart to MacMillan Yard via the North Bay station.

It is common ground that the changes so implemented caused the Company to give notice to the CAW, bargaining agent for its carmen, in respect of the abolition of certain car inspection jobs previously related to trains 450 and 451. It appears that the elimination of the switching and marshalling within the ONR yards removed the need to inspect and brake test the trains, resulting in a reduction of carmen's positions.

The Brotherhood maintains that it has been equally impacted, and that it was entitled to be given notice of a material change under the terms of article 53 of the collective agreement. That article provides, in part, as follows:

53.1 Material Changes in Working Conditions

Prior to the introduction of run-throughs or changes in home stations or of material changes in working conditions which are to be initiated solely by the Railway and would have significantly adverse effects on engineers, the Railway will:

- (a) Negotiate with the Brotherhood measures to minimize any significantly adverse effects of the proposed change on locomotive engineers, but such measures shall not include changes in rates of pay, and
- (b) give at least six months' advance notice to the Brotherhood of any proposed change, with a full description thereof along with details as to the anticipated changes in working conditions. While not necessarily limited thereto, in the case of run-throughs, and the case of other changes where applicable will include the following:

- (1) Appropriate timing
- (2) Appropriate phasing
- (3) Hours on duty
- (4) Equalization of miles
- (5) Work distribution
- (6) Adequate accommodation
- (7) Bulletining
- (8) Seniority arrangements
- (9) Learning the road
- (10) Use of attrition

By the Company's own admission, changes occasioned by the new ON/CN arrangement did result in a reduction in the number of permanent yard assignments advertised, reducing them from four to three. While the Brotherhood does not dispute that fact, it also urges upon the Arbitrator that there has been a substantial reduction of extra yard assignments since the implementation of this new arrangement. In the result, according to the Brotherhood's estimate, the previous frequency of yard assignments, which it maintains was at some twenty-five per week for a considerable period of time, was reduced to fifteen yard assignments per week, a reduction of some forty-four assignments per month or five hundred and twenty assignments per year. Additionally, it submits, two locomotive engineers were unable to hold work in that classification by reason of the changes implemented. The Brotherhood stresses that the reduction in the complement of locomotive engineers cannot be attributed to an earlier reduction in traffic relating to the termination of a contract to haul ore from North Bay to Kidd and Noranda, a decline in traffic which it submits resulted in the earlier reduction of a locomotive engineer's position.

Upon a careful review of the facts the Arbitrator is satisfied that the materials do disclose the implementation of a material change in working conditions within the contemplation of article 53 of the collective agreement. Needless to say, what does or does not constitute a material change within the meaning of such a provision is a matter of fact to be determined within the circumstances of each individual case. Prior awards of this Office have determined, for example, that mere changes in assignments, or the home terminal of an assignment, or indeed the reduction of yard assignments for greater efficiency, do not constitute a material change in working conditions (see **CROA 1167, 1444 and 2893**). Where, however, as in the instant case, the Company enters into an arrangement with another railroad, the impact of which is to permanently abolish assignments which previously existed, be they regular yard assignments or extra yard assignments, with a corresponding reduction in jobs and work opportunities, the conditions of a material change have been made out.

The Arbitrator must agree with the Brotherhood that the facts disclosed in the instant case are reasonably analogous to those reflected in **CROA 2159**. In that case certain switching assignments of Canadian Pacific Limited at Gatineau, Québec were abolished by reason of the work having been contracted to a shortline railway. The facts there disclosed a hand in glove facilitation of the arrangement by the participation of Canadian Pacific Limited. The instant case, although not precisely the same, is reasonably analogous. By agreeing to an arrangement with CN, the Company has gained efficiencies in the servicing of its own customers, and has substantially reduced its own requirements for switching assignments at North Bay. Most significantly for the purposes of this grievance, its actions have, for the reasons discussed above, materially impacted the employees represented by the Brotherhood in a negative way with respect to their employment and general work opportunities. The precise scope of that impact, and the measures which might be negotiated or arbitrated to minimize them are not matters to be commented upon in this award. They should be the basis of closer examination and discussion by the parties themselves.

For the foregoing reasons the grievance is allowed. The Arbitrator finds and declares that the Company violated article 53 of the collective agreement by failing to provide to the Brotherhood a material change notice in respect of the change in train operations at North Bay flowing from its agreement with CN. The Arbitrator directs the Company to issue the appropriate notice to the Brotherhood, forthwith, and to otherwise comply with the procedural requirements of article 53 of the collective agreement. It should be noted that at the hearing the Company withdrew its position with respect to consolidating a parallel grievance of the UTU.

September 11, 1998

(signed) MICHEL G. PICHER
ARBITRATOR